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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,698	08/01/2001	Jorgen Fenger	FENGER 1	1813

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EXAMINER

TRAN, KHOA H

ART UNIT PAPER NUMBER

3634

DATE MAILED: 10/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/830,698

Applicant(s)

JORGEN FENGER

Examiner

Khoan Tran

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8/01/01 & the pre amdt filed on 10/3/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3634

***Abstract***

The abstract of the disclosure is objected to because of the use of legal phraseology, such as "means", see lines 3-5 and 8-11, which should be avoided. Correction is required.

***Drawings***

The drawings are objected to because the rubber-elastic portions are not shown in proper cross-hatching. Correction is required.

A proposed drawing correction or corrected drawings are required in reply to the Office action.

***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

**Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or

Art Unit: 3634

REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a).

"Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The specification is objected to because on page 11, line 30, "Fig. 7" should be --Fig. 4--; on page 12, line 19, "Fig. 1" should be --Fig. 5--, and line 20, "Fig. 1" should be --Fig. 4-- in order to illustrate with what has been described in the specification.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claim 1, "relatively smooth and plane" is undefined and indefinite. Claim 7 appears to be doubly reciting the same element. Specifically, it appears that the "shelf" of claim 7, is the same structure as the

"carrying means" of claim 1. Claim 12 is improper because of the "preferably" recitation. With respect to claim 13, the recitation of "and/or" is improper because it is unclear which one to the two alternatively nonequivalent elements the applicant is positively set forth to have the holder. With respect to claim 20, it is unclear how reference to a second carrying device constitutes or otherwise limits the single device being claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7, 10, 12, and 14-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Althoff et al. in view of Nicholson et al. Althoff et al. disclose a carrying device for retaining flat box shaped items that meets all limitations of the claims except for having a rubber-elastic insert placed in the retaining groove and the saw-tooth projections on the supporting shelf. Althoff et al. disclose a carrying device comprising an upper retaining means of an elongated groove (6A) retains the upper portion of a box like item; a lower carrying means of a supporting shelf extending from a vertical front wall (5) having a stop member (6); a supporting means (8) for supporting against a wall on which the device is suspended; a suspension means (8) with a catch recess extending below the supporting shelf for attaching with another same kind of a device, see Figures 2 and 3. Nicholson et al. teach a carrying device made from

extruded plastic or metal material having a rubber-elastic insert (23) placed in the retaining groove (15), see Figure 3. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the groove of Althoff et al. with the provision of a small slot and an insert places in the slot as taught by Nicholson et al. in order to enable to accommodate smaller box items to be retained therein the groove. With respect to claims 17 and 22, Nicholson et al. teach the carrying device made from extruded plastic or metal material, it would have been obvious to one ordinary skill in the art as a matter of engineering design choice to utilize the type of material and manufacturing process, e.g., extruded plastic or extruded metal, to manufacture the carrying device therefrom because it is well-within the level of skill in the art to utilize the known features of the art for the purpose for which they are known, thus producing no new matter. With respect to claims 2 and 3, it would have been an obvious matter of engineering design choice as determined through routine experimentation and optimization for one of ordinary skill in the art to routinely dimension the width of the shelf to be less than 20 mm and to routinely dimension the width of the retaining means to be less than 15 mm for a particular application thus producing no new and unexpected results.

Claims 8-9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Althoff et al. in view of Nicholson et al. as applied to claims 1-4, 7, 10, 12, and 14-22 above, and further in view of Klukos or A. O. Albright. Klukos and A. O. Albright both teach the extending shelf having projections saw-tooth like shaped. See Figure 4 of Klukos for the illustration of projections (66). See Figure 3 of Albright for the illustration

of projections on the extending shelf (22). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the support shelf of Althoff et al. with the provision of projections saw-tooth like shaped as taught by Klukos or Albright in order to have a non-skid shelf surface. With respect to claim 11, it would have been an obvious matter of engineering design choice as determined through routine experimentation and optimization for one of ordinary skill in the art to routinely dimension the peak of the projection be between 0.2-1 mm for a particular application thus producing no new and unexpected results.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Althoff et al. in view of Nicholson et al. as applied to claims 1-4, 7, 10, 12, and 14-22 above, and further in view of Krinke et al. Krinke et al. teach the supporting shelf having a sign holder (34). It would have been obvious to one of ordinary skill in the art to provide the supporting shelf of Althoff et al. with the provision of a display sign holder as taught by Krinke et al. in order to identify the items that are storing on the shelf.

***Allowable Subject Matter***

Claims 5 and 6 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

Claims 5 and 6 appears to be allowable because there is no prior art of record that teaches or suggests an insert having a lip facing the items and points in a direction toward the stop of the retaining means.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Massaro, Lynch et al., Dahl, Brazier et al., Ernetoft, Price, Jr. et al., Lemmerman et al., ('206) and ('780), Pepicelli et al., Wright et al., and Savino are cited to show devices having similar configurations of design.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 8:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate



Application/Control Number: 09/830,698  
Art Unit: 3634

Page 8

of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:

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Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Khoa Tran  
September 20, 2002



DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600